

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

KENNETH LEE RILEY,

Petitioner,

v.

CIVIL ACTION NO. 5:17-cv-02367

WILLIAM VEST, *Warden*
Beckley Correctional Center,

Respondent.

MEMORANDUM OPINION AND ORDER

On April 17, 2017, the Petitioner, proceeding *pro se*, filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254.¹ Also before the Court is the Respondent's Motion to Dismiss (Document 9) filed on January 5, 2018.

By *Standing Order* (Document 3) entered on April 17, 2017, this action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636. On January 5, 2018, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 16) wherein it is recommended that the Respondent's Motion to Dismiss (Document 9) be granted, and that the Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document 1) be denied and dismissed with prejudice.

¹The Petitioner titled his filing *Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241* (Document 1), but the same was construed by the Court as a Petition for relief pursuant to 28 U.S.C. § 2254 (Document 5).

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by January 22, 2018, and none were filed by either party.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the Respondent's Motion to Dismiss (Document 9) be **GRANTED**, the Petitioner's Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 (Document 1) be **DENIED** and **DISMISSED with prejudice**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Eifert, counsel of record, and any unrepresented party.

ENTER: January 29, 2018


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA